



FDIC

Federal Deposit Insurance Corporation

Washington, DC 20429

Division of Compliance and Consumer Affairs

December 16, 1997

Cynthia L. Johnson
Director
Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
401 14th Street S.W.
Washington, D.C. 20227

Dear Ms. Johnson:

The FDIC submits these comments on the Financial Management Service's ("FMS") notice of proposed rulemaking to implement section 31001(x) of the Debt Collection Improvement Act of 1996 ("DCIA") (62 Fed. Reg. 48714, September 16, 1997). The DCIA generally requires Federal agencies to make "Federal payments," as defined in the statute, by electronic funds transfer ("EFT") after January 1, 1999.

The FDIC filed comments on the FMS's interim rule published on July 26, 1996. Our comment letter set forth the FDIC's legal view that the EFT requirement does not apply to deposit insurance payouts made when an insured depository institution fails because such payments do not fall within the statutory definition of "Federal payments." Moreover, to require electronic funds transfer of deposit insurance payments in a failed bank situation would be impractical and likely would lead to an unwarranted delay in the making of such payments. While we appreciate the changes that were made in the proposed rule to allow agencies to waive the EFT requirements in certain situations, the FDIC continues to believe that the DCIA does not apply to deposit insurance.

The inability of Federal agencies to make electronic payments to those who do not have an account with a financial institution is a key issue in the implementation of the DCIA's EFT provision. These "unbanked" individuals, sometimes referred to as "cash consumers," can incur higher costs and greater financial risks because they do not hold an account with an insured institution. By some estimates, the population of cash consumers may total as many as 50 million people. The Treasury proposal would benefit many cash consumers by creating a system through which they can take advantage of the relative safety and lower cost of transacting business through insured institutions such as banks and savings and loans.

Due to the FDIC's concerns regarding cash consumers, earlier this year, the FDIC formed a task force to develop literature on the benefits of the basic banking services provided by insured depository institutions. The FDIC's task force and the FMS are

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discussing the development of targeted educational programs in conjunction with the implementation of the DCIA. We look forward to continuing to work with the FMS on this important matter.

To be able to provide electronic payments to cash consumers, Treasury's proposal provides for the establishment of Treasury-sponsored accounts at insured depository institutions. The FDIC agrees with limiting these accounts to insured depository institutions because this will provide these consumers with an array of protections: Federal deposit insurance and comprehensive Federal and state regulation and oversight through examinations for safety-and-soundness and compliance with consumer protection laws. These benefits are not available through alternative financial service providers.

The FDIC is committed to educating cash consumers. For this reason, we would like to emphasize the importance of clarifying the terms and conditions of the Treasury-sponsored accounts as soon as possible. Under the proposal, prior to the rule's implementation date, individuals who do not have an account must either establish an account with a financial service provider able to accept electronic funds transfers or use an account established by the Treasury for this purpose. Because the terms of the Treasury-sponsored accounts have not yet been decided, cash consumers cannot yet make an informed decision concerning whether to open an account by January 2, 1999, or wait to take advantage of a Treasury-sponsored account.

It has come to our attention that some alternative financial service providers are attempting to persuade cash consumers to establish relationships with these firms as "authorized payment agents" prior to the regulation's implementation date. Because the proposed rule would not allow individuals who established banking relationships prior to the implementation date to take advantage of the proposed accounts implemented by Treasury, individuals may find that they are committed to such higher-cost alternatives with no ability to convert to the Treasury-sponsored accounts. To resolve this issue, we would urge you to provide flexibility in the rule to address these types of situations so that all individuals who should be eligible for this account can benefit by it.

In the proposal, you ask for comments concerning design and cost of the new account being considered by Treasury. Cost and access to funds should be the chief concerns in establishing these accounts. Outside of the Treasury-sponsored accounts, financial institutions should be encouraged to provide additional services to these customers as part of their overall array of banking products. Also, since one of Treasury's objectives is to encourage cash consumers to move into the financial services mainstream, access to these accounts should be available through the ATM system available to all bank customers.

One final issue relates to providing individual waivers to the EFT requirement. We suggest that Treasury freely grant waivers, where appropriate, because it is difficult, if not impossible, to ensure that the final EFT rule will consider every future situation that could pose a hardship. Also, we suggest that the Treasury allow individuals to switch

from EFT to the receipt of a check, if their circumstances materially change. The proposal does not appear to address this matter.

The FDIC appreciates the opportunity to comment on the proposed rule implementing the EFT provisions of the DCIA. If you wish to contact me concerning this matter, you can call me at (202) 942-3437.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna J. Gambrell", written in a cursive style.

Donna J. Gambrell
Associate Director

cc: Donna Gambrell
Jack Taylor
Legal Division
Roger Hood
Patricia Ford
Alan Cox
John Kotsiras
Jay Rosenstein
Denise Parker
John Jackwood
Bobbie Jean Norris
Kathy Nagle